

**Agreement  
City of Austin  
Circuit Events Local Organizing Committee**

The City of Austin, a home-rule municipal corporation located in Hays, Travis, and Williamson Counties, in the State of Texas, (City) acting through its duly authorized agent the City Manager, and Circuit Events Local Organizing Committee, a Texas non-profit corporation, (CELOC) acting through its duly authorized agent or officer, enter into this Agreement (Agreement) on June ~~23~~29, 2011, upon the terms and conditions set forth below.

**RECITALS:**

1. During the 81<sup>st</sup> Legislative Session, the Texas Legislature appropriated the amount of \$25,000,000 for the state fiscal biennium beginning September 1, 2009 for the purpose of attracting and securing eligible events pursuant to the terms of Tex. Rev. Civ. Stat. Art. 5190.14 § 5A, the Major Events Trust Fund (~~as amended, the “Act”~~) and related rules at 34 Tex. Admin. Code Chapter 2 Subchapter A (Rules).
2. The Act at 5A(r) and (s) authorizes the Texas Comptroller of Public Accounts (Comptroller or State) to enter into an interlocal agreement with a city that contains a site selected by a site selection organization for one or more events (Endorsing Municipality), such as the City of Austin, for purposes of establishing a Major Events Trust Fund (METF) that makes City and State funds available up to one year in advance of an event to attract and secure the Formula One automobile race (Event) for the State of Texas.
3. The Act at 5A(r) and (s) authorizes the interlocal agreement to have a term of up to ten years, with funds in the METF held from year-to-year for future Events.
4. The Act at 5A(b) and (b-1) authorizes an Endorsing Municipality or a local organizing committee (Local Organizing Committee) to request each year that the Comptroller estimate the incremental increases in certain local taxes (Local Increment) and state taxes (State Increment) that will be attributable to the Event.
5. The Act at 5A(d) and (d-1) authorizes the City, or its designee, to fund the METF in an amount up to the estimated Local Increment and, under this Agreement, CELOC, as the City’s exclusive designee, has agreed and committed to fund the Local Increment on behalf of the City; the Act at 5A(f) authorizes the ~~state~~State to fund the METF with \$6.25 for each dollar of estimated Local Increment, but not more than the estimated State Increment.
6. The Act at 5A(d-1) and (e) authorizes the City to determine whether the Local Increment will come from sales, use, and mixed beverage tax collected and retained by the State; hotel occupancy tax collected and remitted by the City; surcharges; any other source; or any combination of sources and, under this Agreement, CELOC has agreed and committed to fund the Local Increment on behalf of the City.

7. If CELOC does not fund the Local Increment on behalf of the City, the City may terminate (i) this Agreement, under Section 29 below, and (ii) the Interlocal.
8. The Act at 5A(h) authorizes disbursements from the METF to the City or its designee and State to fulfill Event-related obligations and at 5A(k) authorizes disbursements to CELOC as the “Local Organizing Committee” on the prior approval of the City.
9. The parties acknowledge and agree that City will solely and exclusively utilize CELOC as its designee ([Designee](#)) to provide the Local Increment, and that this Agreement does not affect Comptroller’s responsibility to provide City’s tax revenues to the City. This agreement does not require the expenditure of City funds into the ~~Major Events Trust Fund~~[METF](#). To provide funds for Future Events, City has requested that CELOC as its designee have the right, at the conclusion of the 2012 Event and all Future Events, to submit additional amounts to the Comptroller for the purpose of replenishing the [Local Increment to the](#) Formula 1 ~~Major Events Trust Fund~~[METF](#).
10. On June 1, 2011, the City received a letter from the Event “Site Selection Organization”, confirming that, after an international highly competitive selection process, the Site Selection Organization has chosen Austin as the sole location for the Event from 2012 to 2021.
11. On June 3, 2011, CELOC incorporated as a Texas non-profit corporation; and, per its Certificate of Formation, its purpose includes assisting with the organization, administration, management, promotion, facilitation, and operation related to hosting the Event and promoting the public interest of the City of Austin, Travis County, and the State of Texas.
12. On June 6, 2011, the CELOC Board of Directors voted unanimously to request, and has submitted a formal letter requesting, that the City (i) act as the Endorsing Municipality for purposes of establishing a ~~Major Events Trust Fund~~[METF](#) for the Event, and (ii) authorize CELOC to submit a request to the Comptroller to determine the incremental increase in the receipts of various taxes.
13. On June ~~23,29~~, 2011, the City of Austin entered into an interlocal agreement (Interlocal) with the State of Texas as an Endorsing Municipality, requesting establishment of the METF and referencing this document.

## AGREEMENT

14. Agreement Purpose.

The purpose of this Agreement is to establish the parties’ authority, rights, and responsibilities with respect to the application to the ~~Texas Comptroller of Public Accounts (Comptroller)~~ for creation of a ~~Major Events Trust Fund~~([METF](#)), the funding of the METF, and disbursements from that account for the ~~Event~~[2012-2021 Events](#) and

upon termination of the Interlocal. This Agreement does not constitute City approval for any permits or licenses that may be needed by CELOC or any other entity to hold this event.

15. Term.

If the Comptroller approves creation of the METF for the Event, this Agreement shall remain in effect until ~~June 22, 2012,~~ 90 days after the 2012 Event, with automatic one-year renewals, terminating ~~during~~ 90 days after the final Event in the year ~~on August 31,~~ 2021 (Term), unless terminated sooner only in accordance with the terms of Sections 27 or 29 of this Agreement.

16. City Authority.

The City has the authority to enter into this Agreement in accordance with the terms of the Act and pursuant to the approval of City Council on June ~~23, 2011,~~ 29, 2011. No City appropriation is necessary for performance of this Agreement.

17. City Responsibilities.

A. City responsibilities and obligations include:

(1) Enter into an interlocal agreement with the Comptroller for purposes of requesting participation in the ~~trust fund~~ METF program.

~~(2)~~ (2) Authorize CELOC, and, if requested by CELOC, confirm the authority of CELOC as the City's exclusive Designee, to (i) contribute the Local Increment on the City's behalf, (ii) prepare and submit disbursement and reimbursement request letters to the Comptroller, (iii) receive funds from the METF, and (iv) make annual METF requests to the Comptroller under 34 TAC Section 2.102(a).

~~(3)~~ (3) Coordinate, cooperate with, and assist CELOC in the submission of invoices, receipts, and other documents evidencing eligible expenses, all as reasonably requested by CELOC, to obtain disbursement and reimbursement of ~~CELOC's~~ eligible expenses from the METF, including providing prior approval per the Act at 5A(k) and for obligations under 5A(h). Parties acknowledge that the State is the final determiner of what constitute an "eligible expense" for reimbursement purposes.

B. Per 17.A.(2), in carrying out the duties in this Agreement, the City may, and does hereby, designate and authorize CELOC to act as its exclusive ~~designee~~ Designee and "Local Organizing Committee" for the ~~Event~~ 2012 to 2021 Events and to perform those certain duties and tasks on behalf of the City as specified in Section 19 below and any such other duties as subsequently agreed by the City and CELOC in writing. Per the Act at 5A(k) and 5A(h), City grants its prior approval for CELOC's submittal to the Comptroller of all disbursement and reimbursement request letters and invoices for eligible expenses related to the Event.

18. CELOC Authority.

CELOC is authorized by the City, and has the authority to fulfill certain responsibilities on the City's behalf, as the City's exclusive "Designee" under the Interlocal at Section ~~15.5~~, and as further authorized and described at Section 19.

19. CELOC Responsibilities and Authority.

A. Year One Responsibilities and Authority (2012 Event).

- (1) The City authorizes and requests, and by its authorized signature below, CELOC agrees that it will fulfill the following responsibilities and obligations on behalf of the City:
  - (a) Make a request to the Comptroller under ~~34-TAC-Section~~Rule 2.102(a), including requesting that the Comptroller make a Local and State Increment determination per section 5A(b) of the Act (Trust Fund Estimate), with such request made not earlier than one year, but not later than 11 months prior to the next Event. Should the date of the Event be changed, the request may be resubmitted at any time permitted by the Comptroller.
  - (b) Commission, pay for, or provide for payment of, and submit to the Comptroller, an Economic Impact Study (EIS) assessing estimated tax increment for the next year's Event.
  - (c) Pay or provide for payment of the City's initial estimated Local Increment contribution, up to the amount of estimated Local Increment determined by the Comptroller, but not to exceed \$4 million.
  - (d) Enter into an Event Support Contract with the Site Selection Organization per Rule 2.100(7)(B).
  - (e) Submit to the Comptroller documentation of the Site Selection Organization's "highly competitive selection process" per Rule 2.100(6).
  - (f) Provide and fund a performance bond or other financial or performance assurance (Assurance) per section 5A(t) in a form and with an institution acceptable to the State insuring the State's Increment Funding if the Event is not held in the State (within the time permitted) after a disbursement of the State Increment has been made. The costs to provide the Assurance may be paid out of the Funds as an eligible expense.
  - (g) Prepare and submit all disbursement request letters for the Event or the METF to the Comptroller, including required documentation and backup information requested by the Comptroller.
- (2) CELOC will have one City representative to the CELOC board. This representative will be a non-voting, ex-officio member.
- (3) All meetings of CELOC shall be conducted in accordance with the Texas Open Meetings Act.

- (4) All records of CELOC shall be open in accordance with the Texas Public Information Act.
  - (5) “Year One” is described as the period between establishment of the METF and 90 days after the first Event occurrence. Provided, however, the definitions of Year One, Future Year, and Final Year in this Agreement are for administrative purposes only and do not preclude or prohibit CELOC from submitting and receiving disbursements of eligible expenses from one such year or period during a different year or period or otherwise limit CELOC ability or authority to submit for and receive distributions from the METF under this Agreement in accordance with the rules for these distributions established by the Comptroller.
- B. Annual Responsibilities and Authority for Future Events (2013-2021 Events).
- (1) The City authorizes and requests, and by its authorized signature below, CELOC agrees that it will, fulfill the following responsibilities and obligations on behalf of the City:
    - (a) Make a request to the Comptroller under ~~34-TAC-Section~~Rule 2.102(a), including requesting that the Comptroller make a Local and State Increment determination per section 5A(b) of the Act (Trust Fund Estimate), with such request made not earlier than one year, but not later than ~~113~~ months prior to the next Event. Should the date of an Event be changed, the request may be resubmitted at any time permitted by the Comptroller.
    - (b) Commission, pay for, and submit to the Comptroller an EIS assessing estimated tax increment for the next year’s Event, to be submitted on or before 20 days after the previous Event (e.g., an EIS for the 2013 race will be submitted 20 days after the 2012 race).
    - (c) Commission, ~~fund~~pay for, or provide ~~funding~~for payment of, and submit to the Comptroller an EIS reassessing estimated tax increment for the previous ~~event~~Event, to be submitted on or before 9 months following each Event per ~~the Act at Section~~section 5A(w).
    - (d) Pay or provide for payment of the City’s Local Increment contribution up to the amount of estimated Local Increment determined by the Comptroller.
    - (e) Provide and fund the Assurance with an institution and on terms acceptable to the State insuring the State Increment if the event is not held in the State (within the time permitted) after a disbursement of the State Increment has been made. The costs to provide the Assurance may be paid out of the Funds as an eligible expense.
    - (f) As the City’s Designee or as required by the Comptroller, submit information, including audited statements, attendance figures, and other related information as described ~~in the Act~~per section 5A(i).

- (g) Prepare and submit all disbursement request letters for the Event or the METF to the Comptroller, including required documentation and backup information requested by the Comptroller.
- (2) CELOC will maintain one City representative on the CELOC board. This representative will be a non-voting ex-officio member.
- (3) All meetings of CELOC shall be conducted in accordance with the Texas Open Meetings Act.
- (4) All records of CELOC shall be open in accordance with the Texas Public Information Act.
- (5) The annual period for each “Future Year” is described generally as the period between the 91<sup>st</sup> day after one Event and 90 days after the next Event.

C. Final Year Responsibilities and Authority.

- (1) The City authorizes and requests, and by its authorized signature below, CELOC agrees that it will fulfill the following responsibilities and obligations on behalf of the City:
  - (a) Commission, pay for, or provide for payment of, and submit to the Comptroller, an EIS assessing the final Event, if any occurs during the Final Year period, to be submitted on or before 9 months following the final Event.
  - (b) As the City’s Designee, or as required by the Comptroller, submit information, including audited statements, attendance figures, and other related information as described ~~in the Act~~ [section 5A\(i\)](#).
  - (c) Prepare and submit all disbursement request letters for the Event to the Comptroller, including requested documentation and backup information requested by the Comptroller.
- (2) CELOC will maintain one City representative on the CELOC board. This member will be a non-voting, ex-officio member.
- (3) All meetings of CELOC shall be conducted in accordance with the Texas Open Meetings Act.
- (4) All records of CELOC shall be open in accordance with the Texas Public Information Act.
- (5) The Final Year is described generally as the period between the 91<sup>st</sup> day after the penultimate Event and 90 days after the last Event.

D. Modifications of obligations and responsibilities.

CELOC’s obligations and responsibilities under this Section 19, and the time periods for compliance or performance, as well as the distributions under Sections 22, 23, and 24 may be modified or amended with ~~notice to~~ [written approval of](#) the Comptroller and the City; [this approval will not be unreasonably withheld](#). Further, the City may ratify any non-compliant or untimely performance by CELOC and upon such ratification, the compliance or performance will be considered and deemed compliant, performed, cured, and timely. Such ratification is only effective if it is in writing.

20. Funding of Local Increment Year One and Future Years.

- A. The City authorizes and requests, and, by its authorized signature below, CELOC agrees to fulfill, the following obligations and responsibilities on behalf of the City: payment of the City's Local Increment contributions for the Event in Year One and the Event in Future Years, in amounts up to the estimated anticipated ~~local incremental tax revenue impact for each such Event as certified by the Comptroller (Local Increment).~~
- B. Per the Interlocal Agreement, the Local Increment will be matched by the State in a ratio of 1:6.25, but currently for Year One the State match may not exceed the smaller of the estimated State Increment or \$25 million.

21. INTENTIONALLY LEFT BLANK FOR EXPANSION.

22. Disbursements in Year One.

- A. The City authorizes and approves for disbursement from the METF in the following order of priority:
- (1) ~~To CELOC, for eligible expenses directly related to the costs of the Assurance.~~ (2) To the Site Selection Organization, payment for all or part of the Event service fee, in an amount not to exceed \$25,000,000.
  - (2) To CELOC, for eligible expenses directly related to the costs of the Assurance.
  - (3) To CELOC, in payment of eligible expenses, including the EIS for the Event.
- B. No disbursement may be made before ~~the~~proof of Assurance is provided to the State and the City.

23. Disbursements in Future Years.

- A. In the period between Year One and termination of this Agreement, the City approves for disbursement from the METF in the following order of priority:
- (1) ~~To CELOC, for eligible expenses directly related to the costs of the Assurance.~~ (2) To the Site Selection Organization, payment for all or part of the Event service fee in advance of the Event, in an amount not to exceed \$25,000,000.
  - (2) To CELOC, for eligible expenses directly related to the costs of the Assurance.
  - (3) To CELOC, for eligible expenses ~~related to,~~ including the Economic Impact Study(ies). ~~(4) To CELOC, for eligible expenses.~~

- B. No disbursement may be made before proof of Assurance is provided to City and State.

24. Disbursements After Final Year.

- A. The City approves for disbursement from the METF after the final Event, in the following order of priority:
  - (1) To the State of Texas, State reimbursement per ~~the Act at~~ [section 5A\(t\)](#), in an amount ~~proportionate~~ [equal](#) to the State's initial appropriated contribution to the fund, but not to exceed \$25,000,000.
  - (2) To ~~the Local Organizing Committee~~ [CELOC](#), for eligible expenses ~~related to the Economic Impact Study, including the EIS.~~
  - (3) ~~To CELOC, for all eligible expenses.(4)~~ — Any remaining funds shall be disbursed pro-rata per the Act at 5A(m) to each entity contributing such funds, with CELOC receiving funds it contributed on behalf of the City as the City's ~~designee~~ [Designee](#).
- B. The Assurance provided by CELOC must remain in effect until [either \(i\) the Comptroller has confirmed all disbursements have been properly completed and any obligation to the METF is released, or \(ii\) the Event occurs in the Final Year.](#)

25. Disbursements Must Be Eligible Expenses.

All disbursements from the METF must constitute eligible expenses, as determined by the State, in accordance with the Act ~~at 5A(h)~~ and ~~Rule 2.104(a)~~ [the Rules](#).

26. Fund Disbursement Upon Early Termination.

Early termination of this Agreement triggers reimbursement of funds on hand to the party or parties contributing such funds, but only after eligible expenses have been disbursed for applicable Events, per ~~the Act at~~ [Section 5A\(m\)](#), with CELOC receiving funds contributed on behalf of the City as City's ~~designee~~ [Designee](#).

27. Sustainability Initiatives.

- A. CELOC and Circuit of the Americas [L.L.C. \(Circuit of the Americas\)](#) will enter into an agreement, with City input, that specifies CELOC's and Circuit of the Americas' responsibilities to accomplish the terms specified in Exhibit A.
- B. CELOC will report to the City ~~of Austin~~ annually, after any F1 race is held and prior to disbursement of funds to CELOC by Comptroller for the next year's race, on progress made as it relates to the terms specified in Exhibit A.
- C. [Subject to and following the 30 day notice and opportunity to cure described in section 29 below, there must also be 90 days written notice of intent to terminate delivered to CELOC, pursuant to this section, with copy to the State \(for a total](#)

120 day notice period).

D. Failure to meet items (A) and (B) above, or terms specified in Exhibit A, constitute grounds for termination; provided, however, both parties will first attempt non-binding arbitration to resolve any dispute between the parties with regard to the alleged failure of Circuit of the Americas to meet items (A) and (B) above or the terms specified in Exhibit A. If non-binding arbitration is not successful, the City and CELOC ~~will~~ agree to resolve the dispute in the jurisdiction and venue set forth in Section ~~32.D.~~ ~~Subject to and following the 30-day notice and opportunity to cure described in section 29, there must also be 90 days written notice of intent to terminate delivered to CELOC, pursuant to this Section, with copy to the State (for a total 120 day notice period~~32 below prior to the City exercising any termination remedy due to such dispute.

~~E.~~ ~~After notice and opportunity to cure stated in (D) above, in~~ City and Circuit of the Americas will enter into an agreement that specifies Circuit of the Americas' responsibilities to accomplish the terms specified in Exhibit A. In the event City is entitled to terminate the Contract between the City and Circuit of the Americas, and City has provided ~~the required~~ notice of the termination of the Contract between the City and Circuit of the Americas, City may terminate this Agreement by giving 90 days advance notice of termination to CELOC.

28. Minority/Women Business Enterprise Initiatives.

*[Note: The language struck below has been moved to the contract between the City and Circuit of the Americas.]*

~~A.~~ ~~For every year of this Agreement, with respect to the construction of all improvements from the effective date of the Agreement forward, CELOC will conform to the standards and principles of the City's M/WBE Ordinance. CELOC will meet the ethnic specific annual contract construction goals as follows:~~

<del>African American owned Business Enterprises:</del>	<del>1.7%</del>
<del>Hispanic owned Business Enterprises:</del>	<del>9.7%</del>
<del>Asian American and Native American owned Business Enterprises:</del>	<del>2.3%</del>
<del>Women owned Business Enterprises:</del>	<del>13.8%</del>

~~B.~~ ~~If CELOC cannot meet the goals, CELOC will demonstrate good faith efforts to meet the goals with specific and detailed information sufficient to show CELOC's good faith efforts to meet the goals as required by the City's Department of Small Minority Business Resources ("SMBR").~~

~~C.~~ ~~The City will provide a list of certified firms to CELOC from which CELOC will solicit participation for the construction of all improvements at CELOC's facility. CELOC will use best efforts to work with SMBR to identify potential scopes of work for certified subcontractors, establish the bid packages, schedule and host outreach meetings, and assist CELOC in soliciting certified firms.~~

~~D. CELOC will report the percentage of ethnic specific participation on a monthly basis using forms provided by SMBR. CELOC will report aggregate M/WBE participation for all certified firms, and will report the percentage of participation by each certified firm. Percentages will be calculated based on a percentage of total construction work completed on the improvements at the site. CELOC will report participation on the basis of both dollars awarded to certified firms and dollars paid to certified firms.~~

~~E. The City acknowledges that this Agreement does not require CELOC to modify, nullify or abrogate any contracts that CELOC has entered into prior to the effective date of this Agreement.~~

City and Circuit of the Americas will enter into an agreement that specifies Circuit of the Americas' responsibilities to accomplish the M/WBE terms specified in that Agreement. In the event City is entitled to terminate the Contract between the City and Circuit of the Americas, and City has provided notice of the termination of the Contract between the City and Circuit of the Americas, City may terminate this Agreement by giving 90 days advance notice of termination to CELOC.

29. Termination With Cause.

A. In the event of a material default by a party relating to the METF authority, rights, and responsibilities set out in this Agreement, the other party shall have the right to terminate the Agreement for cause, but only after written notice of ~~such~~the default is delivered to the party in default via certified mail. The notice shall be effective thirty (30) days after delivery, unless otherwise specified, or the default is cured, as provided below, ~~after the date of delivery of such notice~~. During this time period, the party alleged to be in default shall have the right to and may cure the event of default, or may provide evidence sufficient to prove to the other party's reasonable satisfaction that ~~such~~the default does not exist or that it will be cured in a time satisfactory to the party alleging the default. Evidence may include an opinion from the Comptroller regarding whether or not the alleged default is material to compliance with the Act. Each party's rights and remedies under the Agreement are cumulative and are not exclusive of any other right or remedy provided by law.

~~30. Termination.~~

AB. Subject to and following the 30 day notice and opportunity to cure described in Section ~~29~~29 above, there must also be 90 days written notice of intent to terminate delivered to the State and the other party pursuant to this Section, ~~with copy to the State~~ (for a total 120 day notice period).

BC. This Agreement may be terminated upon occurrence of any of the following events which continue beyond the 30 and 90 day notices and opportunities to cure set forth above:

- (1) Termination of the City's Interlocal Agreement with the State of Texas.
- (2) The Event fails to meet the Performance Measures set out below.
- (3) [Termination of the City's Agreement with Circuit of Americas.](#)

30. [Performance Measures.](#)

[CA.](#) Performance measures are:

- (1) The occurrence of an annual Event within the time permitted in the Act at 5A(s) or otherwise approved by the State.
- (2) City and CELOC, respectively, meet all their designated responsibilities as defined in Sections 17 and 19.
- (3) CELOC timely deposits, or causes the deposit of, each Local Contribution.
- (4) [Reporting regarding Sustainability Measures for the Event as set forth in Exhibit A.](#)

31. Repeal or Modification of the Act.

This Agreement expressly contemplates its effectiveness under the Act as currently in effect. Should the Act be repealed or modified in such a manner that the Event no longer qualifies under the provisions of the Act, this Agreement shall become voidable by either party on ninety (90) days written notice to the other party and the Comptroller.

32. Jurisdiction and Venue.

The parties agree that this Agreement is governed by the laws of the State of Texas and that venue for a dispute arising from this Agreement shall be in Austin, Travis County, Texas.

33. Severability.

If a term or provision of this Agreement is determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement remains effective to the extent permitted by law. [However, if it is determined by a court of competent jurisdiction by a non-appealable final judgment that CELOC cannot provide the Local Increment on behalf of the City, this entire Agreement is void.](#)

34. Notices.

Any notice, request, or other communication required or appropriate to be given under this Agreement shall be in writing and shall be addressed to the person designated for receipt below. Legal notices shall be sent postage prepaid and Return Receipt Requested. Other notices and routine communications may be delivered by any other means (fax, e-mail, courier). These notices and communications shall be deemed delivered upon receipt of a successful fax, e-mail, or courier confirmation report by the addressee; provided, that the notice is specifically directed to the attention of the person designated for receipt of notices to City or CELOC. Notice shall be addressed as follows:

To City:  
Attn: City Manager  
301 W. 2<sup>nd</sup> St.  
Austin, TX 78701

With copy to:  
City Attorney  
Law Department  
301 West 2<sup>nd</sup> St.  
Austin, TX 78701

To CELOC:  
Attn: Chairman  
100 Congress Avenue, Suite 1350  
Austin, TX 78701-2744

With copy to:  
Richard T. Suttle, Jr.  
Armbrust & Brown, PLLC  
100 Congress Avenue, Suite 1300  
Austin, TX 78701-2744

35. [Estoppel Certificate / Lender Protection](#)

Upon a written request from CELOC, the City shall, within ten (10) business days after receipt of such request, execute and deliver to CELOC and any other party designated by CELOC, an estoppel certificate in form reasonably approved by the City Manager which certifies whether the City has knowledge of any default under this Agreement or CELOC's Performance Measures. CELOC may, from time to time, deliver a written notice of lender ("Notice of Lender") executed by CELOC and notifying the City of a lender for all or part of Circuit of the America's race track facilities and related development. The Notice of Lender must include the name and address of COTA's lender (the "Lender"). Until the City receives a written release of the Notice of Lender from the Lender, the City agrees to provide the Lender a notice of default provided to the Comptroller under Section 29 (B) above and will provide Lender the same 90 day opportunity to cure such default.

36. Assignment.

A party to this Agreement may not assign or transfer its interests under this Agreement except with the written consent of the other party to this Agreement; this consent will not be unreasonably withheld.

~~36.~~37. Amendment.

This Agreement may not be amended in whole or in part except in a written amendment executed by all parties to this Agreement, with copy to the State. Further, to the extent that an amendment to the Interlocal affects CELOC responsibilities or changes the contract term, City agrees that the terms of the Interlocal may not be amended or modified without the prior written consent or approval of CELOC; this consent will not be unreasonably withheld. City agrees to promptly furnish CELOC with copies of all notices it receives or furnishes under the Interlocal.

~~37.~~38. Survival of Obligations.

All provisions of this Agreement that impose continuing obligations on the parties shall survive the expiration or termination of this Agreement.

~~38.~~39. Business Days.

Whenever action must be taken (including the giving of notice or the delivery of documents) under this Agreement during a certain period of time or by a particular date that ends or occurs on a non-business day (i.e., Saturday, Sunday, or a holiday recognized by the U.S. federal government or the State of Texas), then such period or date will be extended until the immediately following business day.

~~39.~~40. No Implied Waiver.

No waiver or consent, express or implied, by any party to or of any breach or default by any party in the performance by such party of its obligations under this Agreement, will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such party of the same or any other obligations of such party under this Agreement. Failure on the part of a party to complain of any act of any party or to declare any party in default, irrespective of how long such failure continues, will not constitute a waiver by such party of its rights under this Agreement until the applicable statute of limitations period has run.

~~40.~~41. Limited Indemnity.

**THE CELOC AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY REGARDING THE CITY OBLIGATIONS AND RESPONSIBILITIES THAT THE CELOC IS UNDERTAKING ON THE CITY'S BEHALF AS ITS EXCLUSIVE DESIGNEE AS SET OUT IN THIS AGREEMENT AND THE INTERLOCAL AGREEMENT BETWEEN THE CITY AND THE TEXAS COMPTROLLER.**

**TO THE EXTENT ALLOWABLE BY LAW, CELOC SHALL ALSO DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS OFFICERS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS,**

**SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ~~ATTORNEY'S~~ ATTORNEYS' FEES AND COURT COSTS ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF THE CITY, OR ANY AGENT OR EMPLOYEE OF THE CITY OR CELOC IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. CITY SHALL COORDINATE ITS DEFENSE WITH THE CELOC AS REQUESTED BY THE CELOC.**

**THIS SECTION IS NOT INTENDED AND SHALL NOT BE CONSTRUED TO REQUIRE CELOC TO INDEMNIFY OR HOLD HARMLESS CITY FROM ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CITY OR ITS EMPLOYEES, OR FROM DAILY OPERATIONAL EXPENSES INCURRED BY THE CITY IN THE NORMAL COURSE OF BUSINESS.**

EXECUTED on the \_\_\_\_ day of \_\_\_\_\_, 2011, in Austin, Travis County, Texas.

CITY OF AUSTIN, TEXAS

By: \_\_\_\_\_

Name: Marc A. Ott  
Title: City Manager

Date: \_\_\_\_\_

CIRCUIT EVENTS LOCAL ORGANIZING COMMITTEE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	127
Deletions	97
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	234